
POCSO ACT 2012 VITAL IN CURBING OFFENCES AGAINST MINOR

Yogita*

INTRODUCTION

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the Rules framed there under. The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority *vis-à-vis* the child, like a family member, police officer, teacher, or doctor. People who traffick children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months[□] imprisonment and/ or a fine.

*Advocate & Chairperson CWC Jind

The said Act also casts the police in the role of child protectors during the investigative process.

Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

The said Act recognises almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences.

The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinated response of all the key players, which include the police, prosecution, Courts, medical

institutions, psychologists and counsellors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. Needless to say, the identification and understanding of the roles of each of these professionals is crucial to avoid duplication and promote effective convergence.

A multi-sectoral approach, while mindful of children's rights, would address the problems related to uncoordinated interagency mechanisms that child victims face in the legal and social service process. It will provide a framework within which the service providers will work, and provide a mechanism for information-sharing to help the victim. The process of investigation and referral of cases will also improve. It is envisaged that such an approach will ensure support for the child and his/her family, including assistance with police and court proceedings, arrangements for emergency shelter for children, arrangements for counselling, therapy, and training courses, appropriate rehabilitative services including protective custody and foster care, if necessary; information on and access to financial assistance, where appropriate, and monitoring of family involvement.

The responsibility of supporting children who have been sexually abused should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process.

ROLE OF MEDICAL EXPERT UNDER THE ACT

Section 27 – Medical Examination:

27(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a FIR or complaint has been registered for the offences under this Act, be conducted in accordance with section 164-A of the Code of Criminal Procedure, 1973.

(2) In case the victim is a girl child, the medical examination shall be conducted by a women doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section(3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a women nominated by the head of the medical institution.

Rule 5-Emergency Medical care:

(1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care:

Provided that where an offence has been committed under section 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial or other documentation as a pre-requisite to rendering such care.

(4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including-

(i) treatments for cuts, bruises and other injuries including genital injuries, if any:

(ii) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;

(iii) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease expert;

(iv) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and ,

(v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

(5) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with the section 27 of the Act.

Thus, doctors and support medical staff are involved both at the time of rendering emergency medical care as well as at the time of medical examination.

Doctors have a dual role to play in terms of the POCSO Act 2012. They are in a position to detect that a child has been or is being abused (for example, if they come across a child with an

STD); they are also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse.

Psychologists and Mental Health Expert

Rule 4(2)(e): Where an SJPU or the local police receives any information under sub-section (1) of Section 19 of the Act, they must inform the child and his/her parent or guardian or other person in Whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief

Rule 5(4)(v): Wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made by the medical professional rendering emergency medical care to the child.

Thus, the rules made under the POCSO Act, 2012 provide that the child may be referred for counselling either by the police or by a doctor.

Role of Non-Governmental Organisations

Civil society organisations (independent institutions, non-governmental organisations (NGOs) and independent experts) have a positive role to play in the effective implementation of the POCSO Act, 2012 not only in raising public awareness on children's rights and in disseminating a new culture of child-adult relationships, but also in preventing and responding to violence against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children.

The POCSO Act, 2012 and POCSO Rules, 2012 envisage the involvement of NGOs as support persons for the child, as well as under various other provisions.

i) Making report to police under Section 19(1) of POCSO Act, 2012 - any person, including a member of an NGO, may make a report under this section. Many NGOs work closely with vulnerable children and are in a position to detect child abuse. In many cases, a child may feel more comfortable disclosing abuse to an NGO worker rather than someone in his/her own family. An NGO that has knowledge of the sexual abuse of a child is also bound by the principle of mandatory reporting under section 21(1) of POCSO Act, 2012.

ii) An NGO worker is included in the term "person of trust and confidence". Thus, such person's presence can be requested at the time of recording a statement before the Police or Magistrate

[section 26(1)], medical examination [section 27(3)], and Special Court proceedings [section 33(4) and 37].

iii) An NGO worker may be appointed as a support person by the CWC to assist the child through the pre-trial and trial procedure (sub-rule 7 of rule 4 of POCSO Rules, 2012). Also, the parents, guardian or other person in whom the child has trust and confidence can approach an NGO to act as a support person (proviso to sub-rule 7 of rule 4 of POCSO Rules, 2012).

iv) Where an NGO is appointed as the support person, its worker has a right to be informed under sub-rule 11 of rule 4 of POCSO Rules, 2012 of the developments, including the arrest of the accused, applications filed and other court proceedings. The NGO support person in turn communicates this information to the child and his/her family.

v) The NGO assisting a child can, under rule 7 of POCSO Rules, 2012 file an application for interim and final compensation with the Special Court, as well as with the Legal Services Authority

Child Development Services

Child development refers to the various stages of physical, social, and psychological growth that occur from birth through young adulthood. A child who has been the victim of a sexual offence is likely to have been severely traumatised, both mentally as well as physically. A child development expert is therefore a person who is trained to work with children with physical or mental disabilities, to evaluate such a child's mental and physical development in the context of that child's experience, and to accordingly facilitate communication with the child.

Free Legal Aid

Under Section 12(c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act. The POCSO Act, 2012 confirms the right to free legal aid under section 40, providing that the child or his/her family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority⁶.

In every District, a District Legal Services Authority has been constituted to implement the Legal Services Programmes in the District. The District Legal Services Authority is usually situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

Public Prosecutor

The Protection of Children from Sexual Offences Act, 2012 provides, under **Section 32:**

32. (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provision of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under subsection (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a

Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure,

1973 and provision of that Code shall have effect accordingly.

The purpose of this Act is fulfilled only when all the key role players mentions under the Act functions in co-ordination and in the best interest of the victim under the Act.

The Act is wholesome in itself and will prove pivotal in bringing the victim to the normal course of the society.

REFERENCES:

1. RP Kataria : Commentary on POCSO Act 2012(edition 2013)
2. POCSO Act 2012(Bare Act)
3. Model Guidelines POCSO Act 2012 : Ministry of Women and Child Development Govt. Of India
4. www.pib.nic
5. www.dpju.com
6. www.mapsofindia.com
7. www.lawyersupdate.co.in